



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 52

[EPA-R02-OAR-2013-0192, FRL-9802-1]

Approval and Promulgation of Implementation Plans; Revision to the New York State  
Implementation Plan for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a proposed State Implementation Plan revision submitted by the New York State Department of Environmental Conservation. This revision consists of a change to New York's November 15, 1992 Carbon Monoxide Attainment Demonstration that would remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT Carbon Monoxide attainment area. EPA is proposing approval of this State Implementation Plan revision because it will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area.

DATES: Comments must be received on or before [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2013-0192, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [Ruvo.Richard@epa.gov](mailto:Ruvo.Richard@epa.gov)
- Fax: 212-637-3901
- Mail: Richard Ruvo, Acting Branch Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- Hand Delivery: Richard Ruvo, Acting Branch Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

*Instructions:* Direct your comments to Docket No. EPA-R02-OAR-2013-0192. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the FOR FURTHER

INFORMATION CONTACT section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT;

Henry Feingersh (feingersh.henry@epa.gov), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

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**I. What Action is EPA Proposing?**

The EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) in response to a request submitted by the New York State Department of Environmental Conservation (New York) on April 5, 2007. This revision consists of a

change to New York's November 15, 1992 Carbon Monoxide Attainment Demonstration that would remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT Carbon Monoxide attainment area. EPA's proposal is to remove the off-street parking program that was identified by New York as one of the Transportation Control Measures in New York's 1992 SIP submittal. This limited off-street parking program is imposed and enforced by the City of New York. EPA is proposing approval of this SIP revision because it will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area.

## **II. What is the Background Information for This Proposal?**

New York submitted a Carbon Monoxide SIP on November 13, 1992 entitled "Carbon Monoxide Attainment Demonstration – New York Metropolitan Area" and EPA published a final approval on July 25, 1996 (61 Federal Register (FR) 38594.) These actions became effective on August 26, 1996. On November 23, 1999, New York submitted a request to EPA to redesignate this area from nonattainment to attainment of the National Ambient Air Quality Standards (NAAQS) for Carbon Monoxide. EPA published a final approval of this request on April 19, 2002 (67 FR 19337) and the action became effective on May 20, 2002.

On April 5, 2007, New York submitted a request to revise the SIP to remove a reference to a limited off-street parking program as it relates to New York County. This proposed SIP revision underwent a public hearing and public notice and comment process. In a

July 26, 2007 letter to the State, the EPA responded to the April 5, 2007 revision request by asking for the public hearing record including a response to comments received. New York submitted this additional information to EPA in a letter dated October 5, 2012.

The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT CO attainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA.

The NYMA has been meeting the Carbon Monoxide (CO) standard for over twenty years, since 1992, and CO levels have continuously trended downward. As discussed later in Section IV – “What are the Carbon Monoxide Trends,” current 8-hr CO levels are less than 1/3 of the 8-hr standard while 1-hr CO levels not only achieve the 1-hour standard, they are much less than the 8-hr standard.

### **III. What was included in New York’s Proposed SIP submittal?**

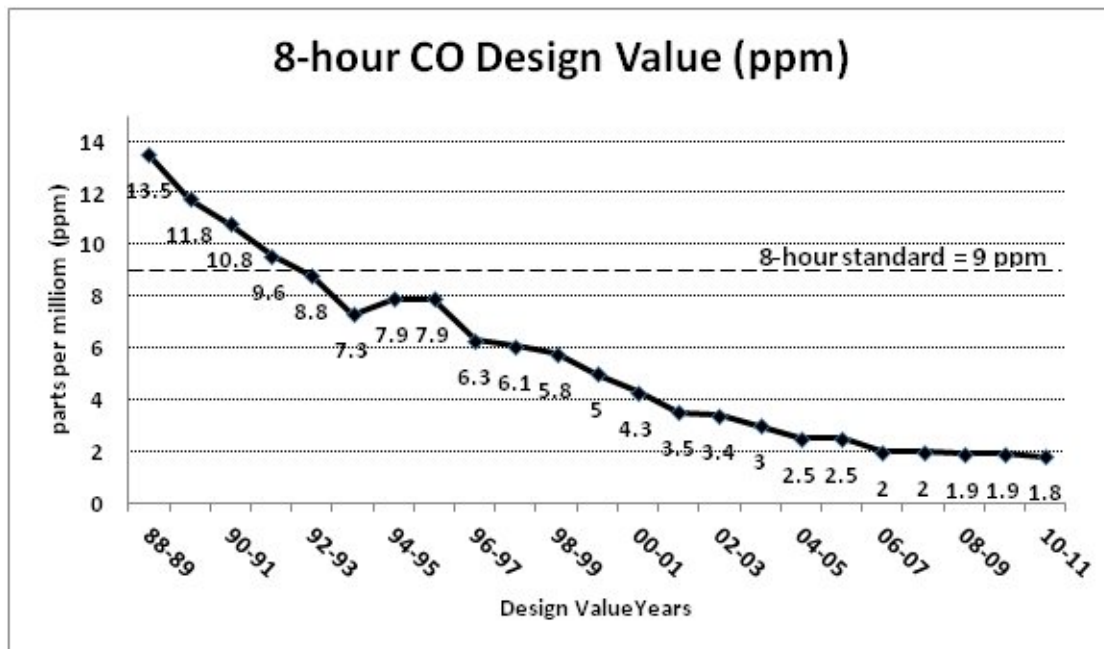
New York submitted to EPA a proposed SIP revision that includes a change to the New York State Carbon Monoxide SIP. The change is a clarification to a commitment identified in New York’s November 13, 1992 submittal. New York also submitted air quality monitoring data from 1997 through 2011 along with an ambient monitoring trends analysis for the period 1988 through 2011. This analysis shows a marked downward trend in CO ambient concentrations. These concentrations are, and have been for a number of years now, lower than the background values used in the 1992 CO SIP.

In addition, New York held a public hearing on July 17, 2007 and written comments were accepted until July 24, 2007, which was an extension of the original May 30, 2007 deadline. New York submitted to EPA a summary of the public comments received and responses to those comments.

#### **IV. What are the Carbon Monoxide Trends?**

There has been a steadily declining Carbon Monoxide trend in the NYMA since the 1980's. The last few years have seen a "bottoming out" of these concentrations. CO values have been dropping steadily for several years and are now lower than background values were at the time of the CO SIP attainment demonstration in 1992. While we observed concentrations over 13 ppm in the 1980's, we are now seeing these values at approximately 2 ppm. This means we are seeing almost no contributions from automobiles at this time. Much of this improvement can be attributed to newer cars with advanced anti-pollution controls.

The following chart shows how the CO monitored design values in New York County have declined from 1988-1989 through 2010-2011. The design values are derived by first taking the second highest 8-hour value for each site in the county for each year. Of these, the highest value for each year (from all of the sites in the county) is the design value for that year. Thus, the design value went from 13.5 ppm in 1988-1989 to 1.8 ppm in 2010-2011.



## V. What is EPA’s Evaluation?

Revisions to SIP-approved control measures must meet the requirements of the Clean Air Act (CAA) section 110(l) to be approved by EPA. Section 110(l) states: “The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Chapter.”

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Thus, for example, modification of a SIP-

approved measure which may impact nitrogen oxide emissions, may also impact particulate matter emissions, and this would have to be evaluated. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

As discussed previously, the air quality data shows a striking downward trend in ambient CO concentrations in the NYMA area for the past twenty years. This dramatic improvement can be attributed to the Federal Motor Vehicle Turnover Program along with advanced anti-pollution controls on motor vehicles.

The NYMA has been attaining the CO standard since 1993. As discussed in Section II, above, on April 19, 2002, EPA published a final rule redesignating the area to attainment. A maintenance plan explaining how the area will maintain the CO standard has been in place since that time. Action on a second 10 year maintenance plan explaining how the area will continue to attain the CO standard for another 10 years will be taken in a separate Federal Register Notice.

It is important to note, aside from ozone, the NYMA is attaining the NAAQS for all of the other criteria pollutants. The area has been attaining the SO<sub>2</sub>, NO<sub>2</sub>, and Pb standards for many years. For CO, the area was redesignated to attainment in 2002 and is currently a maintenance area. For ozone, the area has been designated nonattainment and continues to be designated nonattainment. However, the area has attained the 1-hour ozone standard

and has attained the 1997 8-hour ozone standard by its required attainment date. In addition, the area has been attaining the annual and 24-hour PM<sub>2.5</sub> standards and New York has proposed redesignations for both PM standards. EPA will be taking action on the PM<sub>2.5</sub> standards in a separate Federal Register Notice.

EPA reviewed New York's proposed change to its CO attainment demonstration to determine whether the change will add or contribute to any air quality violations. EPA proposes to determine that removal of the limited off-street parking program from the previous federally approved CO attainment demonstration will not add or contribute to an already existing air quality violation, primarily because there is no existing air quality violation. EPA, in essence, continues to evaluate the New York CO SIP because New York continues to have their CO maintenance plan in place. This plan meets the requirements set forth in section 175A of the CAA and provides for continued attainment of the CO NAAQS.

As for the only other pollutants, ozone and PM<sub>2.5</sub>, for which there may be any potential impact on air quality, EPA notes that for each of these pollutants, New York has developed several other revisions to the SIP to continue the reductions of emissions toward meeting the NAAQS. Specifically for ozone, EPA approved New York's reasonable further progress plan and attainment demonstration for NYMA (see 76 FR 51264 (Aug. 18, 2011) and 78 FR 9596 (Feb. 11, 2013), respectively) which included those measures necessary to attain and maintain the standard. Also, on June 15, 2001 and supplemented on October 1, 2001, New York submitted to EPA its assessment of

whether any Reasonably Available Control Measures (RACM) are available to advance the 1-hour ozone attainment date from 2007 to an earlier year for the New York Metro Area. In this study New York evaluated the emissions reductions associated with several transportation control measures. EPA approved New York's RACM Analysis on February 4, 2002 (67 FR 5170) and determined that there were no additional RACMs (including the transportation control measures) that, when implemented, would advance the attainment date in the NYMA from 2007 to an earlier year. In addition, to address the RACM requirement for the 1997 8-hour ozone standard, New York did a similar analysis and determined that there were additional measures that New York State believes represent RACM as they are reasonably available and can be expected to advance the attainment date and contribute to reasonable further progress. However, the measures identified by New York were all stationary source related and have since been adopted and implemented by New York State. On July 13, 2010 (75 FR 43066), EPA approved New York's RACM analysis for the 1997 8-hour ozone standard.

New York developed a RACM analysis for the 1997 annual PM<sub>2.5</sub> NAAQS that was submitted to EPA on October 27, 2009. Although EPA has not yet proposed action on the PM<sub>2.5</sub> RACM analysis submitted by the state, New York has adopted and implemented control measures that will provide for additional emissions reductions of PM<sub>2.5</sub> and its precursors since the NYMA first demonstrated attainment with the 1997 annual PM<sub>2.5</sub> NAAQS. The measures will be undergoing EPA rulemaking in the near future and, if approved, will become federally enforceable. These measures will collectively help ensure continued compliance with both the 1997 annual and 2006 24-hour PM<sub>2.5</sub>

NAAQS. These measures include New York's Hot Mix Asphalt Production Plants rule (6 NYCRR Part 212.12), Reasonably Available Control Technology for Major Facilities of Oxides of Nitrogen (6 NYCRR Part 227-2), and Best Available Retrofit Technology (6 NYCRR Part 249).

EPA recognizes that DEC's April 7, 2007 SIP submittal is asserting that off-street parking is regulated by the New York City Department of City Planning and its zoning resolutions and not by the CO SIP.

EPA proposes to determine that removal of this one Transportation Control Measure (TCM) will not interfere with air quality or attainment of the NAAQS. In addition, New York has revised the rules which address TCMs before and concluded not to rely on these similar measures in more recent SIP actions. This provides further evidence to lead EPA to determine that this measure will not have an impact on air quality.

We are aware that any new construction project using federal funds must undergo a review pursuant to the National Environmental Policy Act (NEPA),[42 U.S.C. 4321 et seq. Specifically, all federal agencies are to prepare detailed assessments of the environmental impacts of and alternatives to major federal actions significantly affecting the environment. These documents are commonly referred to as environmental impact statements (EIS). The public has an important role in the NEPA process, particularly during scoping, in providing input on what issues should be addressed in an EIS and in commenting on the findings in an agency's NEPA documents. The public can participate

in the NEPA process by attending NEPA-related hearings or public meetings and by submitting comments directly to the lead agency. The lead agency must take into consideration all comments received from the public and other parties on NEPA documents during the comment period.

New York has demonstrated that the changes to its CO SIP will not interfere with attainment and maintenance of the NAAQS for all criteria pollutants. EPA proposes to find that New York has satisfied the demonstration of noninterference required by CAA section 110(l).

## **VI. What are EPA's Conclusions?**

EPA is proposing to approve New York's request to remove a reference to a limited off-street parking program in New York County because this SIP revision will not cause an exceedance of the NAAQS. EPA reviewed the public comments from the July 17, 2007 public hearing record. EPA agrees with New York's responses that New York City continues to run the limited off-street parking program and, although New York City may have relaxed aspects of the program, there is no evidence that this relaxation caused any degradation in CO air quality in the area. In addition, New York did not rely on any emission reductions from this program in its SIP modeling to support the demonstration of attainment of the CO standard. Finally, any new construction project in the area would have to undergo a NEPA process. The NEPA process ensures that a NAAQS violation would not occur due to the project in question.

EPA's review of the materials submitted indicates that New York has revised its CO SIP in accordance with the requirements of the CAA, 40 CFR Part 51 and all of EPA's technical requirements for a CO SIP. Therefore, EPA is proposing to approve the removal of a reference to a limited off-street parking program in New York County.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: April 1, 2013.

Judith A. Enck,  
Regional Administrator,  
Region 2.

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